

Wage and Hour Division, Labor

§ 501.34

process that will be applied with respect to a determination to assess civil money penalties, to debar, or to increase the amount of a surety bond and which may be applied to the enforcement of provisions of the work contract, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, or to the collection of monetary relief due as a result of any violation. Except with respect to the imposition of civil money penalties, debarment, or an increase in the amount of a surety bond, the Secretary may, in the Secretary's discretion, seek enforcement action in Federal court without resort to any administrative proceedings.

PROCEDURES RELATING TO HEARING

§ 501.31 Written notice of determination required.

Whenever the WHD Administrator decides to assess a civil money penalty, to debar, to increase a surety bond, or to proceed administratively to enforce contractual obligations, or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, including for the recovery of the monetary relief, the person against whom such action is taken shall be notified in writing of such determination.

§ 501.32 Contents of notice.

The notice required by § 501.31 shall:

(a) Set forth the determination of the WHD Administrator including the amount of any monetary relief due or actions necessary to fulfill a contractual obligation or obligations under 8 U.S.C. 1188, 20 CFR part 655, subpart B, or the regulations in this part, the amount of any civil money penalty assessment, whether debarment is sought and the term, and any change in the amount of the surety bond, and the reason or reasons therefor.

(b) Set forth the right to request a hearing on such determination.

(c) Inform any affected person or persons that in the absence of a timely request for a hearing, the determination of the WHD Administrator shall become final and unappealable.

(d) Set forth the time and method for requesting a hearing, and the proce-

dures relating thereto, as set forth in § 501.33.

§ 501.33 Request for hearing.

(a) Any person desiring review of a determination referred to in § 501.32, including judicial review, shall make a written request for an administrative hearing to the official who issued the determination at the WHD address appearing on the determination notice, no later than 30 days after the date of issuance of the notice referred to in § 501.32.

(b) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be typewritten or legibly written;

(2) Specify the issue or issues stated in the notice of determination giving rise to such request;

(3) State the specific reason or reasons why the person requesting the hearing believes such determination is in error;

(4) Be signed by the person making the request or by an authorized representative of such person; and

(5) Include the address at which such person or authorized representative desires to receive further communications relating thereto.

(c) The request for such hearing must be received by the official who issued the determination, at the WHD address appearing on the determination notice, within the time set forth in paragraph (a) of this section. Requests may be made by certified mail or by means normally assuring overnight delivery.

(d) The determination shall take effect on the start date identified in the written notice of determination, unless an administrative appeal is properly filed. The timely filing of an administrative appeal stays the determination pending the outcome of the appeal proceedings, provided that any surety bond remains in effect until the conclusion of any such proceedings.

RULES OF PRACTICE

§ 501.34 General.

(a) Except as specifically provided in the regulations in this part, the Rules of Practice and Procedure for Administrative Hearings Before the Office of

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Administrative Law Judges established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings described in this part.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B) will not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The ALJ may exclude evidence which is immaterial, irrelevant, or unduly repetitive.

§ 501.35 Commencement of proceeding.

Each administrative proceeding permitted under 8 U.S.C. 1188 and the regulations in this part shall be commenced upon receipt of a timely request for hearing filed in accordance with § 501.33.

§ 501.36 Caption of proceeding.

(a) Each administrative proceeding instituted under 8 U.S.C. 1188 and the regulations in this part shall be captioned in the name of the person requesting such hearing, and shall be styled as follows:

In the Matter of _____, Respondent.

(b) For the purposes of such administrative proceedings the WHD Administrator shall be identified as plaintiff and the person requesting such hearing shall be named as respondent.

REFERRAL FOR HEARING

§ 501.37 Referral to Administrative Law Judge.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § 501.33, the WHD Administrator, by the Associate Solicitor for the Division of Fair Labor Standards or by the Regional Solicitor for the Region in which the action arose, will, by Order of Reference, promptly refer a copy of the notice of administrative determination complained of, and the original or a duplicate copy of the request for hearing signed by the

person requesting such hearing or by the authorized representative of such person, to the Chief ALJ, for a determination in an administrative proceeding as provided herein. The notice of administrative determination and request for hearing shall be filed of record in the Office of the Chief Administrative Law Judge and shall, respectively, be given the effect of a complaint and answer thereto for purposes of the administrative proceeding, subject to any amendment that may be permitted under the regulations in this part or 29 CFR part 18.

(b) A copy of the Order of Reference, together with a copy of the regulations in this part, shall be served by counsel for the WHD Administrator upon the person requesting the hearing, in the manner provided in 29 CFR 18.3.

§ 501.38 Notice of docketing.

Upon receipt of an Order of Reference, the Chief ALJ shall appoint an ALJ to hear the case. The ALJ shall promptly notify all interested parties of the docketing of the matter and shall set the time and place of the hearing. The date of the hearing shall be not more than 60 days from the date on which the Order of Reference was filed.

§ 501.39 Service upon attorneys for the Department of Labor—number of copies.

Two copies of all pleadings and other documents required for any administrative proceeding provided herein shall be served on the attorneys for the DOL. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, and one copy on the Attorney representing the Department in the proceeding.

PROCEDURES BEFORE ADMINISTRATIVE LAW JUDGE

§ 501.40 Consent findings and order.

(a) *General.* At any time after the commencement of a proceeding under this part, but prior to the reception of evidence in any such proceeding, a party may move to defer the receipt of